ILLINOIS
1914

TRANSPORTATION

ADDRESS BY

HON. CHARLES A. PROUTY

MEMBER INTERSTATE COMMERCE COMMISSION

DELIVERED IN THE PAGE LECTURE SERIES 1909, BEFORE THE SENIOR CLASS OF THE SHEFFIELD SCIENTIFIC SCHOOL YALE UNIVERSITY

(Reprinted from "Every-day Ethics")

Copyright, 1910, by
YALE UNIVERSITY PRESS

NEW HAVEN, CONN.

385
P947t
LIBRARY
OF THE
UNIVERSITY OF ILLINOIS
5 JAN 1914

TRANSPORTATION

CHARLES A. PROUTY

I AM asked to speak for an hour upon the Ethics of Transportation. Since the only transportation of which I have any special knowledge is by railroad, I shall confine myself to that.

The steam locomotive was first developed and steam railroads were first built in England. The original idea was to provide a way upon which the public might operate its own carriages. The railroad was to be like the turnpike or the canal, and just as any individual may haul his barges along the canal or drive his wagons over the turnpike upon the payment of an established toll, so members of the public were to be allowed to operate their engines and cars upon the railroad, paying to the owners due compensation therefor.

It early became apparent, however, that this was not feasible. From the very nature of the service it is necessary that the operation of a railroad shall be exclusive, and from this it has come to pass that the same company is usually the owner and operator. My subject therefore reduces itself to this, The Ethics of Building and Operating a Railroad.

At the threshold of every discussion of this kind, differentiating this business from most other kinds

of business, lies the fact that the railroad is a public servant. The government gives to the railway company the right to appropriate your land against your will. This is because the public requires the service which the railroad is to perform, and hence your interest and desire must give way to the common necessity. A railroad is a monopoly. You must use it for the purpose of travel and of transportation, and you must pay whatever sum is required for that service. The public may, in self-defense, protect itself against this monopoly of universal use. Just as the highway is a necessity to the public, so the railroad, under modern commercial and industrial conditions, is equally a necessity. Many countries build and operate their own railroads. The United States might do so, but has elected to delegate that duty to private individuals.

Whatever the reason, of the fact there can be no doubt. The Supreme Court of the United States long ago decided, and has often reaffirmed the doctrine, that the building and operating of a railroad is a public function, and that the railroad when built, even by private capital, is an agent of the government in discharging its duty to provide this public way.

At the same time the property employed in this business is private. Next to agriculture the amount invested in railroads exceeds that in any other kind of business. The last statistical report of the Interstate Commerce Commission shows the capitaliza-

tion of our railroads to be over sixteen billions of dollars. Some donations have been made from time to time by individuals and municipalities. The national government has contributed very con-considerable sums mainly in the way of land grants; but still practically all of this enormous amount has come from private sources and has been invested in the hope of earning a return from the prosecution of the business.

This dual relation, the fact that the service is public while the capital is private, makes the so-called railroad problem difficult and even perilous.

In England the public character of the railway has been recognized from the first. As early as 1850 the act permitting the organization of railroad corporations provided that they should treat without discrimination all members of the public. In the United States it has been otherwise. The country was new and in process of development. Railroads were an absolute necessity. Attempts by the states to build and operate railroads had proved disastrous. Hence, if the railroad was actually built and operated, there was little inquiry at first as to the method or even as to the charge made for the service.

Olcott *v.* The Supervisors, 16 Wallace 678, in which the Supreme Court of the United States laid down the doctrine that the railroad was the agent of the government in the performance of this public service, was decided in 1873. In 1876

came the Granger Cases, affirming the right of the state to establish the charges which a railroad might exact for its transportation services. Nevertheless, this idea continued to be economic and legal rather than practical. Until comparatively recent times our railroads have been not servants, but masters. Only when the abuses became so glaring and their effects so important that they could no longer be overlooked, did the public give practical effect to this principle. To-day both the several states and the United States do in fact exercise a considerable measure of control over the charges and operations of railroads.

This public character of the railroad must be thoroughly apprehended. There can be no comprehension of the right and wrong of these matters otherwise. The railroad magnate, potent as he is, must acknowledge in the government of the United States a master. The railroad employee, while his first allegiance is to the company which pays him, should also understand that he owes a certain duty to the public. Even more important is it that the people themselves should realize that these railways are their servants; that as such they should not be impeded and oppressed, but fostered and assisted.

Keeping, then, always in mind the character of the service, let us consider the building and equipping of the railroad, including the getting of the money therefor.

It is probably true that at no time in the world's

history has the mere possession of great wealth given to its possessor the relative distinction which it does to-day. Isaac of York was an individual of great consequence in his generation; but he moved in a different sphere and was accorded a different sort of consideration from that which his lineal descendants in Wall Street to-day receive. If one had undertaken 50 years ago to name our famous men he would have designated the orator, the statesman, the author, the man of science; seldom the man of riches. To-day our millionaires are the notable and influential members of society. It is their movements in which the people take interest and which the newspapers record.

And for this there is a very substantial reason. The wealthy men of to-day have, as a rule, acquired their riches by various kinds of industrial and commercial activity. They have built railroads, constructed factories, opened mines, given employment to thousands. They have been the active factors in the wonderful material development of this nation in recent years. We are to-day the foremost power in the world because we are the richest and greatest wealth-producing country in the world. It is natural that the masses should deify those men whose operations have made us great.

There is inborn in most men a desire for fame and power. It is altogether natural that a young man standing as you do upon the threshold of life should inquire in what sphere of action he can

exercise the most potent influence, and that, so inquiring, his attention should be turned to those occupations in which great wealth has been accumulated.

In no other business have so many great fortunes been amassed as in the railroad world. In no other sphere have these enormous accumulations come into existence almost by magic as here. Those who have made the beginnings in other fields have multiplied their possessions by their operations in railroads and railroad securities, and by all this the young man is attracted to this sphere of activity.

Now, I would not by any word of mine discourage young men from embarking in railroad service. There is probably no better field. It is the most important of all commercial industries. The character of the service is such that a high grade of ability is required, for which a high compensation is paid. The calling is a most honorable one. The very fact that it is quasi-public in its character; that more than any other business it immediately concerns the lives and the property of the whole community, renders it an occupation of the highest grade. But the young man should thoroughly understand that the conditions of yesterday are not the conditions of to-day and will be still less those of to-morrow. He should not enter that service with the idea of duplicating the experiences of the past, if he is to square his conduct with any proper notion of right and wrong.

The railroad is a public servant. Its only income is derived from the charges which it imposes for the performance of its public duty, and those charges should be reasonable. If a railroad property pays an extravagant return, it is usually because its rates are unreasonably high. No young man, certainly, should embark in that occupation with the expectation of imposing upon the public unlawful and unjust charges and of accumulating by that means for himself or his stockholders great profits. He may properly expect a handsome compensation for his own services and a sure return upon the investment which he makes; he has not the same right to obtain here as in private business extravagant returns.

Still more to the point is this thought: Long ago when I was just entering upon the practice of my profession up in Vermont, I inquired of a legal friend whether his brother lawyer who had grown rich in the profession had made his money by his practice. My friend replied, "By his 'practices.'" The great fortunes which have been accumulated by our railroad magnates have generally come, not as the product of railroad building, but from the various practices which have been rife in the past. There has been the construction company, watered stock, consolidation, reorganization, the manipulation of the stock market, and so on. It is by such means that these enormous fortunes have been accumulated.

Consider those English captains of the sea who roved the main in the days of good Queen Bess. Sturdy men they were. They turned a stream of gold into the coffers of England; they made the name of English seamen respected in all quarters of the world; their own names are embalmed in history as the potent men of that generation. Were these same gentlemen conducting these same operations to-day they would be promptly hung as pirates.

So with our modern captains of industry. They have been energetic men; their work has been of great benefit to our country. It may be that in no other way, for instance, could our railroads have been built; but none the less many of them have been pirates upon the sea of finance, and the methods which they have practised will not be tolerated in time to come.

These changed conditions must be fully appreciated by the young man who embarks in railroad service of any character. Our railroads have, for the most part, been built. The work of the future lies in the enlarging and perfecting of our present systems. For that a different kind of ability is required. The railroad magnate of the half century to come should be more a railroad operator, less a stock manipulator. Bearing in mind these changed conditions, let me indicate some of the rules which in my opinion should determine the right and wrong of building and financing a railroad.

1. No railroad should be built which is not neces-

sary. In the past railways have been constructed for various purposes besides that of operating at a profit. They have sometimes been built for the profit to some construction company from the building. They have sometimes been built for the sole purpose of invading the territory of a rival, and thereby forcing down the value of the property of that competitor, so as to compel either a consolidation, a lease, or a sale upon terms unduly advantageous. In my opinion all operations of this sort are morally wrong.

We are not considering the ethics of competition. If an individual sees fit with his private capital to construct a factory which can be of no benefit to him except in so far as it works injury to his rival, that may be his moral right. Certainly, that possibility was an incident in view of which the investment was made, and, as a rule, only the private capital invested is interested.

With a railroad this is entirely different. Here is a public institution. The property invested in that enterprise is entitled to a fair return, and this return is derived from the charges which the public must pay. Generally, that particular road alone serves a given community and if the service be inadequate the whole community must suffer. It is a fundamental proposition that whatever tends to enhance the actual cost of performing this transportation service is detrimental to the public which is served.

Let us assume a railroad serving a certain territory. The business of that territory is sufficient so that this railway can be operated in an efficient manner at reasonable rates and with a suitable return to its owners. A second railroad is constructed parallel with the first. The advent of this second carrier does not increase the total business to be done; it simply divides that business between two competitors. Those expenses of operation, which may be termed the fixed expenses of a railroad, the maintenance of its way, payment of a certain part of its employees, have been increased twofold. Broadly stated, twice the capital is now invested in serving this territory which is actually needed.

One of three things must result. Either the service will degenerate, or the charges will be increased, or the owners of these properties will receive an inadequate return; generally all three of these things happen in a degree.

In private business competition with all its harsh features seems necessary. In no other way can the public be protected against the imposition of unreasonable prices; but with the railroad the government itself can fix the charge for its service, which is the price of this commodity, and can prescribe the character of the service, which is the quality of the commodity.

In the popular apprehension the more railroads the better. Such is not the fact. Every unneces-

sary mile of railroad is a damage to the public. Sound thinkers have long since recognized the truth of this principle, and even the popular mind is beginning to grasp it. In one state at least no railroad can be constructed until public authority after intelligent investigation has determined that the public necessity requires it. The time will come when positive law will generally so provide; but meanwhile, without the inhibition of the statute, the promoter of a railroad should recognize and apply this truth, and wilful failure to do so is, in my judgment, a breach of good faith.

2. Every railroad should be honestly built. By this I mean that the railroad when completed should not stand the company which owns it at more than the actual cost of its economical construction.

This would seem to be axiomatic, and is only referred to because of the very extensive prevalence of the contrary practice. Numbers of railroads have been built for the sole purpose of enriching a construction company. Even when the work is done by the railroad corporation itself there is too often graft in every direction: commissions to purchasing agents, purchases from concerns owned by railroad officials, numbers of devices all of which go to swell the cost of the property beyond what it should be.

Similar practices are prevalent in all kinds of private business; but find their fullest expression

in railway operations. The capital of a railroad corporation is usually larger, the stockholders are more numerous, there is not the same sense of direct responsibility upon the part of the official, and his act is not subject to the same scrutiny as in case of a strictly private enterprise.

I believe that we are working steadily to a higher plane in this respect; but even to-day there is altogether too much of this character. These things will cease when the public not only regards them as wrong, but treats as wrong-doers those who have grown rich by these means. When you brand a man as a malefactor in high place in the morning, invite him to luncheon at noon, and call him into counsel upon the state of the nation in the evening, the moral effect of the whole performance is weakened. With respect to all these operations to which I refer, when men are not only termed malefactors but treated as malefactors, the thing will stop.

3. The capital account of a railroad corporation should represent the amount of money actually invested. No dollar of stock or of bonds should be issued which does not stand for a dollar paid into the property. I do not mean that a bond may not be sold for less than its par value; for that may be unavoidable; but so far as possible the character of the security should be such and the rate of interest such that the bond will be handled substantially at par. The object should be to make the capital account of a railroad represent the money

which has been actually paid into that concern by outside individuals. All those devices by which railroad stocks and bonds are issued without a present money consideration are wrong.

This subject is too broad a one for discussion here; but I may say in a word that the reasons which support this proposition are of two classes. The first concerns the investing public. The capitalization of a corporation does not of course affect the value of the property of that corporation. The market price of the stock usually recognizes the difference between the real value and the capitalization. If the value were accurately known so that buyers and sellers of these securities might understand the relation between that value and the amount of the outstanding stock, there would be no objection from the standpoint of the investor to overcapitalization.

In fact, the value of a railroad is not known; the cost of constructing it is not known; even the earning power of the property is an uncertain quantity and has been, in the past, subject to much manipulation.

Nothing has contributed more to the improper and iniquitous operations upon the stock market than the ability to issue, ad libitum and without present money consideration, railroad stocks and securities. Nothing would do more to lend certainty to the value of railroad stocks, to take them out of the domain of the speculative security and make them an investment security, which they

properly are, than the inability to so manipulate them.

The second reason arises out of the public character of the corporation. We have already seen that the private property invested in the performance of this public duty is entitled to a fair return upon its fair value.

It is often said by railroad representatives that rates cannot be fixed according to the amount of capital stock of a railroad; and this is true. The rates of a particular railway are often determined by conditions which that railway does not control; but, upon the other hand, railway rates as a whole should be largely based upon the fair value of the property used. When, as to-day, there is a general assertion upon the part of railroads as a whole that their rates must be advanced in order to yield a suitable income upon the investment, it becomes material to know what is the fair value of this property. The amount of money actually and honestly put into the enterprise does not of necessity fix its value; but the highest judicial authority has declared that this is one of the important elements which should be taken into account. The one thing in this complex problem which can be known with absolute accuracy from now on is the amount which is actually invested in the enterprise; and that thing should be known.

It is urged that in fixing railway rates the innocent holder of these watered stocks must be con-

sidered; and the Interstate Commerce Commission has so decided. He has bought in good faith, without notice that his stock represents no actual consideration, and it would be an act of injustice to take from him the value which he has honestly purchased. If a railroad stock sells upon the market for $500 a share, that is in a measure notice to the purchaser that the charges of that corporation are excessive. They may not be. The railroad may be so situated that upon reasonable rates it can make earnings which justify this value; but, in a way, the man who pays that price does so with notice. The transaction is entirely different when he buys without knowledge a share of stock four parts of which are water and pays $100 for it. In time the origin of these railroad stocks is forgotten and the stock itself is dealt with as it stands.

I have been engaged for a dozen years in considering how railway rates can be fixed so as to do justice between the public and the railroad. If I were to name to-day that thing which in my opinion would be of the most consequence in time to come I should say absolute control over the capital account of this public servant. When no security can be issued by a railway company without government sanction; when all new stocks and bonds must be sold at the market price; when every dollar received from the sale of securities or from the operation of the property must be used in operating or improving the railroad itself, there has been

laid the foundation for a structure in time to come which will afford one reliable indication of the rate which the railway should be allowed to charge.

Mr. Harriman says, "You may regulate my charges if necessary; but you should let alone my financial operations." The most conclusive answer to this proposition is the history of some of the financial operations of Mr. Harriman as exhibited in testimony taken before the Interstate Commerce Commission.

We come now to the operation, and I need not say here, as I did in reference to the building, that the strictest honesty and economy should characterize every transaction. In the past the railroad has been the fair mark for any kind of plunder. People who would not be guilty of the slightest dishonesty in their dealings with private individuals will cheat a railroad; and this same notion is more or less prevalent among the officials and employees of the railroad itself.

That all this is radically dishonest; that the same rule should obtain in the treatment of this public service corporation which obtains in dealings between private individuals, needs no confirmation, and without spending time in commenting upon it I bring to your attention two matters in connection with the operation of the railroad.

It is, in the first place, the duty of a railroad manager to operate his railroad for transportation

purposes and to use his railroad funds and his railroad employees for no other purpose.

Owing to the public character of the service, railways are particularly interested in the acts of the government. The legislature may determine the appliances which the railroad shall use. It may fix the hours of service of its employees. It determines the kind and the amount of taxes which shall be imposed. It may even establish the rates which the railroad can charge. Plainly, therefore, it is of great importance that the railroad shall be able to control the action of the legislature.

For this it has efficient means. Its money resources are large. Its employees are numerous. In the past it has been able to afford free transportation, a most potent means of political influence, and by concessions in its rates to confer the most important advantages.

This combination of inducement and means has led the railroad to take an active interest in politics. It has enacted statutes, appointed judges, elected governors, and even presidents.

This political activity is justified by the railroad manager upon the theory that in no other way can his property be protected against unjust assaults. The private individual may undoubtedly contribute to legitimate political campaign expenses. It is possible that a private corporation whose property is private in its use and whose will is that of the majority of its stockholders may properly contribute

in like manner. It may conceive that its pecuniary interest is so far involved in the success of a political party or a political idea that it is justified in using its funds to assist the party or promote the measure. This is a matter the ethics of which I am not now discussing. The court of final resort in New York has held that it is not a criminal act for the officers of an insurance company to pay out of the funds of that company a contribution to one of the national political parties.

However that may be with a private corporation, a railroad company has no right to use its funds for such purposes. That corporation by reason of its public nature stands in a way as a trustee for the whole people. The funds themselves come from the people. The function of this public servant is transportation, not government.

Some time ago in the course of testimony taken before the Interstate Commerce Commission under resolution of Congress, in reference to the proceedings of the Standard Oil Company, it turned out that that corporation, among other practices, was accustomed to buy space in newspapers, for which it paid at advertising rates and which it was allowed to fill with news matter. Sometimes this paid matter found its way into the editorial columns. To my mind, among all the devious practices upon the part of that so-called trust which were revealed in that investigation, none was more dangerous than this. To permit a concern like that to fill

the columns of the public press with statements of fact and statements of opinion supposed to be from disinterested sources is to poison the very fountains themselves.

A railroad may properly state its case to the public, and, under many circumstances, should use its funds for that purpose; but let it be in the open over its own signature.

In the second place, the railroad manager should operate his property for the convenience of the public and with uniform consideration of the public.

We come back always to the same proposition: the railway is a public servant, and while it is entitled to just earnings upon the capital employed, the manner of those earnings must be regulated in view of the public interest. The establishment of its regulations, the arrangement of its schedules, the operation of its trains, should all be in this view.

A railroad is a monopoly. The passenger must use its train, must pay for the time being the fare required, and must submit to the regulation imposed. He has no direct voice in determining any of these things. This circumstance leads him to view with suspicion and dissatisfaction the acts of the railway, and furnishes the strongest possible reason why the greatest care should be exercised in the first instance in establishing the rule and the rate, and why any criticism should be carefully considered.

The politic railway manager will satisfy many

unreasonable demands. He will remember that the public is ignorant and must be instructed; that it is unreasonable and must be patiently borne with. The railroad employee should observe uniform courtesy toward the public. Courtesy pays in private business, and is insisted upon by the private employer; in this public service it is a duty. This should be the rule among all railroad employees from the highest to the lowest. The millionaire traveling in his private car is entitled to no greater consideration than the poor woman with her bundles and her babies.

In the last dozen years my duties have taken me over all the great railway systems of this country and into every state and territory many times. I have been interested to observe the attitude of the railway employee to the public, and of the public to the railroad. While I have usually been able to commend the treatment accorded to the public, I have observed many striking examples to the contrary.

You may think that all this goes to the amenities rather than to the ethics of transportation; that matters of this sort are too trivial to occupy attention in this place. Not so. It can never be of little consequence in any walk of life to fail in that thing which good conduct and good conscience require. But here this relation of the railway to the public is a matter of paramount consequence.

The passenger upon the train may be for the

moment entirely subject to the dictation of the railway; but there comes a time when, standing at the polls or in the jury box, he is the master. I am convinced that nothing is more responsible for what injustice has been done railroads by juries and by legislatures than this public-be-damned attitude of too many railroad managers and railroad employees.

Not long ago the president of one of our great systems said to me that in his judgment railroads would be compelled to look for the protection of their properties to the constitution and the courts; that the people, if they were free to exercise their will, would virtually confiscate our railroads. Did this gentleman forget that courts and constitutions as well as legislatures are in this land of ours creatures of the people? The constitution was made and can be unmade. Courts may stand between the railroad and any temporary invasion of its right. They cannot defeat a settled purpose upon the part of the voters of this country.

There are times when the railway must appeal to the court for protection against the acts of the legislature and the commission. When that time comes the appeal should be made and the court should fearlessly discharge its duty in dealing with that appeal. But, as a matter of policy if not of ethics, this course should be taken only as a last resort. When a court of the United States sets aside a statute enacted by the supreme authority of a state, some temporary benefit may accrue to

the railway; but there remains a bitter taste in the mouth of the voter and a rankling in his heart which sooner or later are likely to find expression in ways against which no court can grant protection.

Railroads have protected themselves in times gone by by controlling courts and legislatures. One method of protection has seldom, if ever, been tried, and that is an honest appeal to the voters themselves. Some railways are beginning to resort to this expedient. I have in mind one railroad president operating extensively in a section of the country where legislation has been thought to be the most hostile, who loses no opportunity to lay before the communities which he serves the necessities of his road. I can but believe that this method if persisted in will win; and that no other method finally can.

Now in cultivating a proper spirit upon the part of the people toward the railway, nothing can be more important than the uniform consideration of the public in these relatively minor matters. If I were a railroad president I would insist, first of all, upon unvarying courtsey upon the part of my subordinates from the highest to the lowest; for no other failure of duty would I more severely discipline an employee. I would see that every complaint was promptly and effectively dealt with.

We come finally to the charges which may be imposed by the railroad for the service rendered to the public. Are there any ethical limitations upon these charges?

Its rates are a most vital thing to the railway. It is for the sole purpose of charging these rates that the railroad is built and operated. Whatever affects the amount of these charges touches in its tenderest point the welfare of the railroad corporation. From the standpoint of the railway itself this matter is of supreme consequence.

Of equal consequence is it to the public. Except what a man digs in his own garden, almost every article which he puts into his mouth or upon his back, which enters into the necessity or the comfort of his daily life, has been the subject of transportation by rail and has contributed its part of the railway charge.

These charges have sometimes been termed a transportation tax, and while the expression is not strictly accurate, the analogy is close. They are in essence a tax paid by every other species of property to that kind of property which is invested in the rendering of the transportation service. If too high, these charges are a most insidious means for taking unjustly from the masses and transferring to the few. One cent per ton upon the tons of freight handled for the year ending June 30, 1907, would amount to almost $18,000,000.

Equally important is the relation in rates. The railroad rate determines who shall do business and where it shall be done; where coal shall be mined; where flour shall be ground; where cities shall be built. Had I the time it would be profitable and

perhaps more entertaining than my present subject if I were to show you by actual illustration and in greater detail the truth of these statements. I must, however, ask you to accept my statement that in the rate is centered the interest, in the main, both of the public and of the railway.

Every one who has given even superficial consideration to the matter of railway charges knows that they present themselves in two aspects. There is, first, the inquiry whether the rates are too high for the service rendered, without reference to the charges made for other similar services; and there is, in the second place, the question whether the relation between the charges imposed for the performance of similar services with respect to different individuals or different commodities is just. We will consider first what may be termed the absolute rate; finally, the relative rate.

Those of you familiar with the De Officiis of Cicero will recollect that he suggests several instances in which the owner of property ought not to exact for its sale the highest price obtainable. Whatever may be your opinion of the cases propounded by this philosopher, certainly the general rule is quite otherwise. The private individual may ask for his property or his services whatever he lists. They belong to him and he may keep them or he may dispose of them, and to whomsoever and for whatever he sees fit.

Not so with the railroad, which must serve all

persons alike, whether it wills or not; and which must make for those services a reasonable charge. Plainly, therefore, it is opposed to good conscience to exact a rate which is unreasonable or discriminatory.

While this statement is unexceptionable in the abstract, it is extremely difficult of application in the concrete for the reason that it is most difficult to determine what is an unjust and an unreasonable railway rate. The government sometimes fixes the charge, and thus in that instance determines the matter; but formerly in all cases, and to-day with respect to the bulk of railroad transportation, the carrier is free to fix, in the first instance at least, its own rates. By what standard can the justice of those rates be measured?

If a railroad was constructed for the purpose of transporting a single commodity between two given points and was engaged in no other service, an answer to this question would be comparatively easy. It would be possible to determine the cost of the plant and the expense of the operation and in that way to arrive with reasonable satisfaction at a just rate. In actual practice this is in no wise the case. Railroads generally engage in the transportation of both passengers and property, and the property in particular is offered in every variety of form and under all conditions. It is sometimes heavy and other times light; sometimes of great and at other times of little value. In some instances the cost of transportation is of little conse-

quence in comparison with the value of the article, while in other cases the price of carriage may absolutely control all dealings in the commodity. The problem, therefore, of figuring out a reasonable rate becomes a well-nigh impossible one. Even were it possible to determine what the total receipts of a railway company ought to be, it would be impossible to distribute that amount among the various commodities actually handled.

Some years ago, in examining the traffic official of one of the great railroad systems of this country, I asked him to state the basis upon which the rates of his company were fixed. After mentioning one measure of reasonableness after another and finding that none of them would stand the test of an actual application to his various rates, he finally said, in despair: "To be perfectly honest, we get all we can, and even that is too little."

I think this gentleman pretty accurately stated, in this sentence, the manner in which the railroad rates of this country have been made in recent years. They are as high as they could be, and most railroad operators have honestly felt that even so they were too low. It was because the competitive conditions which had fixed rates in years gone by were fast disappearing under the influence of combination, that the country was aroused to the necessity of taking measures to protect itself against an unjust increase when these competitive conditions had disappeared.

The thoughtful traffic manager who gave honest expression to his belief would probably state that the rule of most universal application which governs him in the making of his rates is that expressed by the phrase, "what the traffic will bear." So long as business moves freely his rates are just. When the movement stops he begins to examine the propriety of his charges. This is the only ethical obligation which he acknowledges.

"What the traffic will bear" is an obnoxious phrase. There is about it an odor of extortion. For one who can charge anything he pleases, to take all he can get strikes the ordinary mind as outrageous, I am not certain, however, but that the rule as properly applied and understood is a valuable one, and that the traffic official may apply it without justly subjecting himself to the charge of wrong-doing. Let me illustrate just what the meaning of this phrase is in its general application.

I am the manager of a railroad extending 250 miles, from A to B. At C, a distance of 50 miles from A, is located a coal mine, at which the cost of placing the coal upon the cars is one dollar per ton. Coal of that grade sells in the open market at A for $2.25 per ton. I establish a rate of one dollar per ton for the handling of that coal for a distance of 50 miles.

This is certainly a liberal rate; but the earnings of my road as a whole are not excessive; nor can the rate itself, five cents per 100 pounds, be regarded

as extortionate. The owner of the mine is perfectly satisfied, for he is making a magnificent profit upon the operation of his property. A is a prosperous community buying its coal cheaper than most communities.

I resign as manager of this road and become the manager of another road extending in the opposite direction from A, 250 miles to X. The two roads are in all respects identical, the cost of construction, capitalization, business — everything is substantially the same.

At X is located a coal mine precisely similar to that at C. The cost of producing coal upon the cars is one dollar per ton, and the coal will sell in the market at A for $2.25 per ton. I establish a rate for the haul of 250 miles of $1.15 per ton.

Now, have I in these two cases been guilty of any wrong? In the first instance everybody is satisfied; everybody is prosperous. In the second case, the mine at X is not as prosperous as the one at C, for the profit of the miner at C is two and one-half times as great; but still the miner at X operates to advantage upon a profit of ten cents per ton. The return to my railroad is not satisfactory under the rate of $1.15; but that figure is better than nothing at all. In other words, the traffic will bear one dollar in one case and $1.15 in the other; therefore, I impose one dollar in the first case and $1.15 in the second case. Nor does it seem to me that the traffic manager can be accused either of inconsist-

ency or of moral dereliction who establishes rates as suggested in this illustration.

The case which I have put is an extreme one; but it illustrates the principles under which the railroad tariffs of this country have been developed. The study of the traffic manager has been to get business, and he has made such rates as were necessary to secure that business. The rates actually made in pursuance of this idea have been often inconsistent and have provoked severe criticism. It does not seem to me that the application of the principle is of necessity wrong. Upon the contrary, its application, within reasonable bounds, is healthy both for the railway and for the community.

I have said that the capitalization of a railway ought to represent the money actually invested. Ordinarily, the dividends paid upon the capital stock ought not to be extravagant. Mr. Hill said in giving testimony before the Commission that seven per cent was enough. I think he is right. Only in extreme cases would a larger dividend be justified.

So long as there is no overcapitalization, and so long as the rate of dividend is a reasonable one, I do not feel that there can be much danger of the rate being inherently too high under conditions as they actually exist and have existed in most parts of this country. If the earnings of the railroad are actually invested in the improvement of the property no great injustice has transpired. What-

ever has been taken from the public is still subject to the public control, and while a scale of rates which permits of the betterment of the property out of the earnings may impose upon the present generation a tax somewhat higher than is strictly just, still so long as we pay it without inconvenience no great harm is being done. Instances might of course be imagined where rates have been so extortionate as to justify censure of the person who imposed them; few cases of that kind have fallen under my observation; and I imagine them to be extremely rare.

There are many uncertainties in the management of a railway. The volume of business and the expense of operation vary. The demands of the public for improvements which do not produce increased business are ever growing. The evolution of new railroad methods renders useless the old. So long as the charges are paid without inconvenience by the public; so long as the traffic moves, there is not much danger that rates will become permanently too high, provided we can control the capital account and know, therefore, the return which is actually paid in cash upon the cash investment.

With the relative rate this is entirely different. Let me illustrate my meaning by an example here, taking for that purpose the railroad A B and assuming that two mines are located at C. From mine No. 1 coal can be put upon the cars for one dollar per ton, and it sells in A at $2.25 per ton. From

mine No. 2 the cost of producing coal is $1.25 upon the cars, and the quality of the coal being poorer it sells in the market for but two dollars per ton.

What may the railroad do under these circumstances? May it impose the rate of one dollar upon the coal from mine No. 1 and a rate of fifty cents upon the coal from mine No. 2, thereby equalizing the profits of the two mines?

I think not. The cost of transporting that coal is the same; the service which the company renders to these two individuals is the same. The value of that service may be somewhat less to the miner whose coal is worth but two dollars than to the miner whose coal is worth $2.25, and possibly this difference in value may properly find expression in some slight difference in the rate; but certainly the railway has no right to take up in its tariffs this difference in operating cost of the mine and quality of the coal.

To admit of any such right upon the part of the railway would be to concede that railways, by the establishment of their rates, may equalize, enhance, or utterly destroy all natural advantages. If the railroad can by its rate make the coal of mine No. 2 equal to the coal of mine No. 1 in the ground, then there is no such thing as a natural value. Everything depends upon the whim of a particular railway; or, if the rates are to be revised, upon the whim of the body which finally decides.

In my opinion the traffic official has little, if any,

latitude in case of the relative rate. It is his absolute duty to treat all shippers alike. Voluntary discrimination of any sort between his patrons is wrong. A railroad has a very wide latitude with the absolute rate in the development of its business; it has no such license with the relative rate.

I am aware that the contrary has been often affirmed in actual practice. I know that there are numbers of rates now in effect which utterly violate this rule, which could not with propriety be disturbed. It would be easy to suggest conditions and absurdities which might arise in the application of such a rule, and still I myself believe that there is no more essential principle in the administration of our railroads than this. So far as can be absolute equality must be done between competing individuals and competing commodities and localities.

I should fall short of my duty in presenting this subject if I did not spend a moment in suggesting to you what may be termed the obverse side of this question. None of you may be either railway magnates or railway employees; you will all be citizens of the United States and charged, as such, with the responsibility of dealing with this problem.

I have endeavored to impress upon you that the railway is a public servant, and that, as a public servant, it owes certain duties to its master; I would impress it upon you with equal force that the public as master owes certain duties to its servant.

It has already been observed that the railway is

apt to be considered a fair mark for plunder; and the same idea finds unconscious expression in the attitude of the public toward the railroad in many matters of governmental regulation. The people of this country as a whole have no desire to oppress its railways or to do injustice to that species of property. In the past the railroad has been the aggressor; it has by its own conduct compelled the public to assert itself; but there is to-day the very gravest apprehension that the pendulum may swing too far the other way.

The money investment in our railroads has been put there for the purpose of earning a return. Just as there is upon the part of the railway itself an implied promise to the people that its services shall be rendered for a reasonable charge, so there is, upon the part of the people, an implied promise that this property shall be allowed to make such charges as will yield to it fair compensation.

The form of this investment is such that it cannot be withdrawn. Private capital can usually be taken out of private enterprise. The property can be sold or removed to other fields of activity. Not so the railroad. It must be used where it is and for that purpose, or it is worthless. Whatever prevents it in that form from earning a fair return virtually confiscates the property.

It may be, and is true, that vast fortunes have been accumulated by improper manipulations of railroad properties and railroad securities; but the

men who have accumulated those fortunes for the most part no longer own the securities. The owners of our railway stocks to-day are mainly innocent purchasers who hold them for value paid. To impair the value of these stocks would not punish the persons who have improperly profited by these transactions in the past. Justice requires that we deal with this problem mainly as it is and that we do not impose upon railway capital such limitations as will prevent it from making a suitable return by reason of what has already happened.

The government might have built and operated its own railways, but instead of doing so it has invited private capital to discharge for it this public function, upon the assurance that such capital shall be allowed to exact a fair compensation for the service. Nothing can be more unjust than to deny to this capital that right.

Not only does a sense of justice require this; self-interest also dictates it. The railroads of this country must, in the immediate future, be very largely extended and improved; additional facilities must be provided to meet the increased demands which will be made. This will require the outlay of vast sums of capital; and this capital must come mainly, not from the earnings of the railroad, but from the investing public. We can provide by legislation the sort of cars which a railroad shall use and the rates which it shall impose; we cannot by legislation force one single dollar of

private capital into railroad investment against its will.

Capital will seek investment in this field for exactly the same reason that it will in any other; namely, upon the expectation of making a profit out of the investment. It is not necessary that the return should be large; but it is necessary that it should be certain; that the people who put their money into this form of investment shall feel confident of fair and honest treatment.

A want of adequate railway facilities would mean industrial paralysis. Unless they are provided when needed, the government will find itself confronted with a demand from all sources — from the merchant, the manufacturer, the farmer — which will force it to meet in some way the necessitites of the occasion; and this can only be by either furnishing the capital or providing the railroad itself. If we are ever brought face to face with the proposition of government ownership, it will not be by the imposition of excessive charges, for we can deal with that situation, but by the impossibility of obtaining adequate facilities. The possibility of such an emergency is by no means fanciful. We were upon the brink of it in the fall of 1906 and the winter of 1907, when crops were rotting upon the ground because they could not be carried to market and when people were freezing because coal could not be transported to keep them warm.

This phase of the matter is too little considered.

If this government hopes to continue its present system; if we are to look in the future as in the past to private capital for the providing of our railroad transportation, it is fundamentally necessary that confidence in the fair treatment of that capital shall be established.

It is often urged that the proper way in which to produce confidence is by stopping the regulation of railroads. It is urged that their attempted regulation has only resulted in confusion and disaster and that it never ought to have been undertaken.

This is nonsense. Whoever controls the highways of a nation controls that nation. Regulation was inevitable, and without it a state of anarchy would have resulted. There must be regulation, and that regulation must be complete and effective; but it should be just and intelligent. The problem is how to secure the right kind of regulation. The naming of a railway rate or a railway rule which shall be followed for the future is a legislative function, but none the less it cannot properly be discharged by the legislature itself. In all its essentials the act partakes more of the judicial than of the legislative. The problem presented is a new one, requiring a new kind of machinery.

The only feasible way seems to be to create a tribunal in the nature possibly of the present commissions; to make that tribunal as able, as dispassionate, as honest, as is possible, and to leave with it the solution of these questions. Any such

tribunal will make errors on both sides; but in process of time it will become, so to speak, educated to its duties. Just as the courts of England, acting through a series of years, evolved our common law, so in time there will grow up a system of rules applicable to this subject which will be reasonably just to both parties.

There is grave probability that within the half century the United States must consider the question of taking over the operation of its railroads. No other complete solution of many questions which present themselves can be suggested. The tendency everywhere is that way. Other governments are continually moving in that direction, and never in the other direction.

Such an undertaking would, however, be a tremendous one. It is not certain that the result would be unfortunate; but the experiment would be hazardous. For one, I would be glad to see regulation fairly tried before ownership is resorted to. To this end there is necessary, upon the part of the public, intelligence honestly directed, upon the part of the railway honest coöperation, upon both sides patient forbearance.

3 0112 062004889